

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

DANIEL A. LEVY, JR. and
MARYANN LEVY,

Plaintiffs,

v.

CIVIL NO. 2:21-CV-15
(KLEEH)

ELKINS CHRYSLER, DODGE,
JEEP, RAM,

Defendant.

ORDER ADOPTING REPORT AND RECOMMENDATION [ECF NO. 5]
AND DISMISSING ACTION WITHOUT PREJUDICE

On June 1, 2021, the pro se Plaintiffs, Daniel A. Levy, Jr. and Maryann Levy ("Plaintiffs"), filed a Complaint against the Defendant, Elkins Chrysler, Dodge, Jeep, Ram ("Defendant"). Pursuant to 28 U.S.C. § 636 and the local rules, the Court referred the action to United States Magistrate Judge Michael J. Aloï (the "Magistrate Judge") for initial review. On June 17, 2021, the Magistrate Judge entered a Report and Recommendation ("R&R"), recommending that the Court dismiss the action without prejudice for lack of subject matter jurisdiction. While the Complaint alleges that diversity jurisdiction exists, the Magistrate Judge found that the amount in controversy was below the \$75,000 threshold.

The R&R informed the parties that they had fourteen (14) days from the date of service of the R&R to file "specific written

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objections identifying the portions of the Report and Recommendation to which objection is made, and the basis for such objection." It further warned them that the "[f]ailure to timely file written objections . . . will result in waiver of the right to appeal from a judgment of this Court based upon such Report and Recommendation." Plaintiffs accepted service of the R&R on June 21, 2021. See ECF No. 6.

When reviewing a magistrate judge's R&R, the Court must review de novo only the portions to which an objection has been timely made. 28 U.S.C. § 636(b)(1)(C). Otherwise, "the Court may adopt, without explanation, any of the magistrate judge's recommendations" to which there are no objections. Dellarciprete v. Gutierrez, 479 F. Supp. 2d 600, 603-04 (N.D.W. Va. 2007) (citing Camby v. Davis, 718 F.2d 198, 199 (4th Cir. 1983)). Courts will uphold portions of a recommendation to which no objection has been made unless they are clearly erroneous. See Diamond v. Colonial Life & Accident Ins. Co., 416 F.3d 310, 315 (4th Cir. 2005).

On June 25, 2021, Plaintiffs filed documents with the Court. See ECF No. 7. The Court hereby construes the filings as objections to the R&R. In the objections, Plaintiffs restate the general allegations from the Complaint. They also specify certain expenses they are seeking. Upon de novo review, the Court finds that the amount in controversy is less than \$75,000. Diversity

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jurisdiction applies "where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between . . . citizens of different States." 28 U.S.C. § 1332(a)(1). Because the amount in controversy does not exceed \$75,000, diversity jurisdiction does not exist. There is no federal question at issue in this case. Without either diversity jurisdiction or federal question jurisdiction, the Court lacks subject matter jurisdiction.

Upon careful review, the Court **ADOPTS** the R&R [ECF No. 5]. This action is **DISMISSED WITHOUT PREJUDICE** for lack of jurisdiction and **STRICKEN** from the Court's active docket. All other pending motions [ECF No. 20] are **TERMINATED**.

It is so **ORDERED**.

The Clerk is directed to transmit copies of this Order to counsel of record via email and the pro se Plaintiffs via certified mail, return receipt requested.

DATED: May 25, 2022



THOMAS S. KLEEH, CHIEF JUDGE
NORTHERN DISTRICT OF WEST VIRGINIA